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**DECISION MEMO**  
**TOMICHI CREEK EXPLORATION PROJECT**  
**MOLYBDENUM AND COPPER EXPLORATION/TOMICHI RESOURCES**

**U.S. FOREST SERVICE**

NE 1/4 OF SEC 23, NW 1/4 SEC 24, SW 1/4 SEC 24, NE 1/4 SEC 26, T50N, R5E NMPM

**NEAR WHITEPINE, COLORADO**

**GUNNISON RANGER DISTRICT**

Grand Mesa Uncompahgre and Gunnison National Forests  
Gunnison County, Colorado

**BACKGROUND**

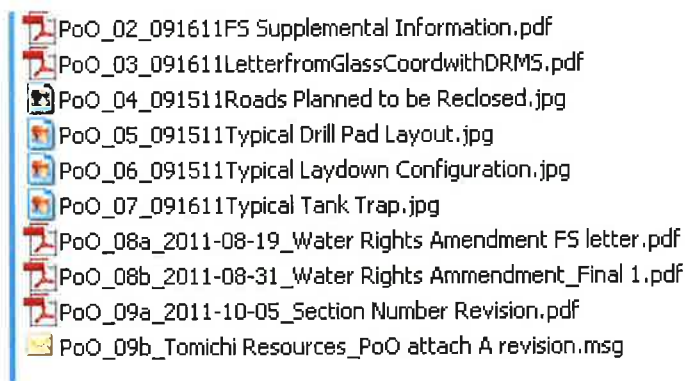
The Forest Service received a proposed Plan of Operations (PoO) to explore for molybdenum and copper in the area of Tomichi Creek, of Gunnison County. Tomichi Resources, LLC, a wholly owned U.S. subsidiary of Burnstone Ventures, Inc. of Vancouver, British Columbia, holds unpatented mining claims under the General Mining Act of 1872 and is proposing to drill nine exploration holes on these claims. The purpose of this exploration drilling is to confirm mineralogy found in previous exploration. Proposed drilling locations were located based on the known geology of the area, as well as, historic records of drilling on site. Specifically, drilling locations are located in existing roadbeds to minimize the ground disturbance and resource impacts.

**LEGAL CONTEXT OF DECISION**

Under administration of The General Mining Act of 1872 (30 U.S.C 22-47) and associated regulations at 36 CFR Part 228, the legal authority of the Forest Service is limited to the imposition of reasonable conditions for the protection of surface resources. The Forest Service cannot deny a PoO, but rather can only specify changes in it to incorporate reasonable environmental protection measures. Owners of unpatented mining claims, such as is the case here, have a right to enter and develop those claims for extraction of minerals. Such entry includes the exploration for and development of that resource.

**DECISION**

It is my decision to approve, subject to the required changes listed below, the PoO as submitted by Tomichi Resources. The proposed PoO I am approving consists of an initial submittal dated July 27, 2011, supplemented by additional submittals as follows:



The PoO must be changed to meet the purposes of Regulations at 36 CFR 228A as follows:

- Operations approved in this PoO must be completed in one year or less from the date operations commence;
- At page 1 of Attachment B, number 2, change the word “whole” to “hole;”
- The season of operations is to be July to the time operations are snowed out. No over snow access (i.e., snowmobile, snowcat or other mechanized equipment designed for traveling over snow) is allowed. Seasonal and over snow restrictions are for the purpose of avoiding snow compaction impacts and effects to denning lynx and during the initial parental care of kittens;
- If an active goshawk or other raptor or owl nest is discovered, consult with the district wildlife biologist to determine if species are being adversely affected. A seasonal timing restriction and buffer (1/4 mi around nest sites) may be recommended to prevent nest abandonment. Drilling at sites within this buffer may not be allowed until after July 31, but drilling could continue at sites outside the buffer;
- No snow plowing will be permitted other than the removal of snow drift barriers in July;
- Cutting of trees is limited to the removal of dead or dying hazard trees or live trees that clearly represent a hazard to crews. Removal of sapling trees (less than 4 inches dbh) for access to and on drill locations and laydown area is permitted. Cutting of merchantable timber will be approved by the District Ranger in advance and will be purchased by the operator at the appraised value;
- The hole to be drilled on the Tomichi Pass Road will either be drilled early in the season (when the pass is still closed due to snow) or late in the season (but not during hunting season - rifle). Ideally, when the Tomichi Pass Road is closed due to drilling, the higher loop road will still be kept open to facilitate OHV travel around the closure to and from Tomichi Pass;
- The operator will be responsible for all traffic control and traffic signing to inform the public of road access or conditions;
- The short-spur road (to the overlook) will be closed by the company once they are done

drilling the hole at this location - closure methods will include tank traps at the beginning of two spur roads and slashing in the roads with on-site vegetation. One drill hole is located on a spur road that is currently closed. The tank trap closing this road must be reconstructed once work is completed at this location;

- A reclamation bond, approved by and held by the Colorado Division of Reclamation and Mine Safety (DRMS) covers the bond obligation of Tomichi Resources. No additional bond will be required by the Forest Service.

Tomichi Resources acknowledges that approval of this PoO does not relieve them of the obligation to comply with other applicable state, federal or local law, rules, or regulations.

### **RATIONALE FOR DECISION**

While not required, it is my choice to offer discussion here of my rationale for coming to the decision I have. Although no EIS or EA will be prepared, considerable analysis and thought has been devoted to this decision.

Initial design and location of proposed drilling was presented to the Forest Service by Tomichi Resources and their consultant. Subsequent discussions in the field and the office led to the relocation of selected drill holes so that the entire footprint would be in existing roads, with all activities occurring on previously disturbed areas. Access was designed purposely to use existing roads and require no additional road building.

This project has been considered by the district Interdisciplinary Team (IDT), both in the field and in an IDT meeting September 14, 2011. Public comment was reviewed. The potential for environmental effects and appropriate mitigation measures were discussed leading to those adopted as part of this decision. The U. S. Fish and Wildlife Service was consulted through the Biological Assessment leading to mitigation measures incorporated here. In addition, based on the analysis of potential impacts, discharges to waters of the United States are not expected. Therefore, no Clean Water Act certifications or permits are required prior to authorization of this PoO.

It is my finding that the footprint of disturbance has been designed to be the minimum possible, while still allowing the holder of these unpatented claims to enjoy their right to access and development of their claims, under The General Mining Law of 1872 and 36 CFR 228 regulations.

Appropriate and reasonable measures for the protection of the surface resources and the environment have been incorporated as part of this decision and as requirements upon the operator.

And finally, this operation takes place in a setting where there is a history of extensive mining. The town of Tomichi was established to support mining. Several of the proposed drill locations are located within 20 feet of historic drill locations. This previous drilling of exactly the same nature as the proposed drilling left no effect not contemplated here. The current proposal does little in the short term to alter the character of the area and in the long term will not even be noticed.

## USE OF A CATEGORICAL EXCLUSION

This action is categorically excluded from documentation in an environmental impact statement (EIS) or an environmental assessment (EA). The applicable category of actions is identified in federal regulations at 36 CFR 220.

Specifically this activity falls under 36 CFR 220.6(e) “*Categories of actions for which a project or case file and decision memo are required...*”

*8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include, but are not limited to:*

*(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;*

The activities approved with this Decision Memo (DM) are consistent with those described by example for this category.

In order for an action to be categorically excluded, the potential for effects on “extraordinary circumstances” must be considered. From regulations at 36 CFR 220(b).

*“(2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.”*

I find that there are no extraordinary circumstances that would warrant further analysis and documentation in an EA or EIS. In accordance with 36 CFR 220.6(b) “*Resource conditions. (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS,*” I took into account resource conditions that should be considered in determining whether extraordinary circumstances might exist:

- Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species – Both a Biological Assessment addressing the potential effects on Federally listed Endangered Species, and a Biological Evaluation addressing the potential effects on Region 2 Sensitive Species were prepared and are part of the project record. The BA concludes:

Implementation of the project "may affect, but is not likely to adversely affect" the Canada lynx. Mitigation measures are stipulated in this DM to minimize these effects.

Implementation of the project will result in a may affect, and is likely to adversely affect the endangered Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), and bonytail chub

(*Gila elegans*), and their designated critical habitat. The adverse impact determination is based upon potential water depletion on 1.4 acre-feet of water over the life of the project. Any water depletions associated with the project will be reported under the year they occur in accordance with the GMUG's programmatic water depletion consultation (ES/GJ-6-CO-F-033-CP062, as amended April 27, 2007).

The BE concludes:

The proposed action will have no impact on a rare moonwort (slender moonwort, *Botrychium lineare*). Sensitive plant surveys found no occurrences of slender moonwort within areas affected by the proposed action.

The proposed action may adversely impact individuals, but is not likely to result in a loss of viability in the planning area, nor cause a trend toward federal listing for the northern goshawk, American Marten, boreal owl, and boreal toad.

I find that there is no sufficient effect in either case to rise to the level of an "extraordinary circumstance" triggering additional NEPA.

- Flood plains, wetlands, or municipal watersheds – There are no flood plains, or wetlands within the area of effect. There is no designated municipal watershed, although residents of Whitepine may argue that water relied upon in this remote community originates in the project area. The location of drill holes in existing roads, the removal of all drilling fluids, the recycling of drilling water, the distance from live water of all drill locations, and granitic soils leads me to conclude there will be no effect on domestic water supplies from these actions.
- Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas – None are to be found in or near the project area.
- Inventoried roadless areas or potential wilderness areas – None are within or near the project area.
- Research Natural Areas – None are within or near the project area.
- American Indians and Alaska Native religious or cultural sites – None are within or near the project area.
- Archaeological sites, or historic properties or areas – A cultural resource survey was done for the area of potential effect (APE) and a report concluding "no effect" was prepared and forwarded to the State Historic Preservation Officer (SHPO). In this case, no reply from SHPO within 30 days indicates concurrence. There is no effect on any archaeological site or historic property or area.

## PUBLIC INVOLVEMENT

This action was originally listed on the GMUG Schedule of Proposed Actions and was included in the Scoping Notice sent to interested public and the press.

A Scoping Notice was e-mailed to parties known to have an interest along with the local press. The Scoping Notice and list of parties to whom it was sent is in the project record.

While scoping comments may be received and considered throughout a NEPA analysis, to be most useful they must be submitted early enough for effective consideration. A request was made in the Scoping Notice for public comment to be received by September 16, 2011.

Comments received are in the project record.

A total of 32 individual letters/e-mail messages in the form of letters were received. One was from High Country Citizens Alliance. One was from the President of the Home Owners Association at Whitepine. All others were from individuals. None were from any other organization, local government or agency.

It was apparent in reading many of these letters that many commenters were misinformed about what is proposed. Many, if not most, wrote in reaction to a rumor that a full scale mine was being proposed. Various letters referred to “an open pit mine,” “60,000 tons of ore per day,” and “effects of a mine.”

***Forest Service Response:*** *The proposed Plan of Operations proposes to drill nine exploration holes, utilizing a drill rig mounted on a track hoe, with all drilling sites located on previously disturbed areas, and in all but two, continuously travelled roadways. No mining is proposed. Any mining that may follow would be subject to an entirely new and much more detailed environmental analysis and public process.*

A common thread in almost all comments was dismay at the potential for disturbance to the natural setting/community and environment in the Whitepine area by long term residents and property owners. Most comments plead for denial of any operations in their area.

***Forest Service Response:*** Following below, is a excerpt from the Forest Service policy Manual, FSM 2800 - MINERALS AND GEOLOGY Chapter 2810 - MINING CLAIMS:

#### ***2813.1 - Rights of Claimants***

*By location and entry, in compliance with the 1872 act, a claimant acquires certain rights against other citizens and against the United States (FSM 2811).*

#### ***2813.11 - Rights of Possession Against Other Citizens (Third Parties)***

*A valid mining claim creates a possessory interest in the land, which may be bartered, sold, mortgaged, or transferred by law, in whole or in part, as any other real property. A locator acquires rights against other possible (peaceable) locators when the locator has complied with the applicable Federal and State laws. Where more than one locator is involved on the same land, Forest Service actions should be impartial to all known locators of that land, as the controversy is the responsibility of the locators, not the Forest Service, to settle.*

*The following is an excerpt from a paper entitled MANAGEMENT OF LOCATABLE MINERAL ACTIVITY ON NATIONAL FOREST SYSTEM (NFS) LANDS, which is included in the record for this project, and made part of this Decision Memo.*

*“The United States mining laws confer a statutory right upon person [in this case Tomichi Resources/Burnstone Ventures as holders of valid unpatented mining*

*claims] to enter certain lands reserved from the public domain, for the purpose of discovering and developing locatable mineral resources. These rights include activities that are reasonably incident to, and needed for mineral development, and include provisions for filing mining claims to establish a property right to the minerals in question.*

*The Forest Service has the authority to regulate locatable mineral activities using procedures described in 36 CFR 228A. The purpose of these regulations as stated in 36 CFR 228.1, is to manage operations so as to minimize adverse surface impacts to, and to reclaim disturbed NFS surface resources.*

*The Forest Service's right to manage locatable mineral development is limited. **The Forest Service cannot categorically deny or refuse to process an otherwise reasonable plan** that complies with the Mining Laws, including 36 CFR 228A, and applicable federal environmental laws. **The responses that can be made to a proposed Plan are defined at 36 CFR 228.5.** These include approval of the Plan as submitted, or notification of changes that are required for approval."*

*Tomichi Resources/Burnstone Ventures holds a right to conduct operations it proposes. Based on an interdisciplinary review, and application of required NEPA procedure, reasonable conditions of approval to protect the environment have been developed and are made a part of this decision.*

Concerns were expressed for potential effects on:

- Access to Whitepine/blockage of roads by either traffic or equipment during operation and mobilization/demobilization.
- Damage to the road/limited maintenance by the County/adequacy of the bridge at Whitepine to carry heavy equipment/ability of roads to carry proposed use without more modification than is reflected in the proposal.
- Damage to shallow water lines, drainage lines parallel to and under the road through Whitepine.
- Detriment to the recreation experience of hikers and 4 wheelers including local users and users of the Continental Divide Trail.
- Stream crossings on roads are low water crossings and subject to damage by heavy equipment in spring runoff.
- Accidental spills or fire.
- Safety of residents in the area... hazard from traffic, especially trucks and heavy equipment.
- Wildlife including lynx, sensitive species including moonwort, elk, deer, marten.
- Water quality of water after use for drilling and mining/requirement for monitoring.
- Water quality/effects from spillage of chemicals or fuels or erosion.
- Historical sites/old cemetery/cabins.
- Quality of life/community of Whitepine/setting for the long term residents and property owners in the area.
- Effects of noise.

**Forest Service Response:** *All of these concerns have been considered, both in the refinement of the proposed PoO, working with the operator, and in the formulation of additional conditions of approval made part of the Decision. An example of the modification of the proposed PoO by Tomichi Resources may be seen in the September 16, 2011 letter agreeing to install sound insulating panels on the drill rig and to restrict the*

*operating season by beginning operations in July, to minimize impacts on lynx during rearing of young. Response to other issues are reflected in the conditions listed in the Decision itself. While we have considered all issues raised, not all resulted in modifications to the Decision.*

Most comments argued generally that a Categorical Exclusion would not apply and for preparation of an Environmental Assessment. Two comments argued that a Categorical Exclusion would not apply due to the presence of extraordinary circumstances and the cumulative effects of the proposal coupled with a full mine that would follow.

***Forest Service Response:*** *For discussion of this, please see the section of this DM headed “Use of a Categorical Exclusion.”*

Two comments expressed reservation about the financial position of Burnstone Ventures and called for a substantial reclamation/performance bond to cover accidents, spillage, fire, and reclamation.

***Forest Service Response:*** *With no comment on the financial position of Burnstone Ventures a reclamation bond has been calculated and made part of the requirements of approval of the PoO. No operations will be allowed to proceed until this bond is in place.*

## **FINDINGS REQUIRED BY OTHER LAWS AND REGULATIONS**

This decision is consistent with the GMUG National Forest Land Management Plan.

Requirements of the Endangered Species Act are addressed above under “Extraordinary Circumstances.”

Requirements of the National Historic Preservation Act are also addressed above under “Extraordinary Circumstances.”

Requirements of the Clean Water Act (as related to floodplains, wetlands, waters of the United States) are met as none of these water resources are affected.

There are no effects on air quality. The requirements of the federal Clean Air Act are met.

There is no effect on any population of disadvantaged peoples, requirements related to Environmental Justice are met.

There is no effect on handicapped or otherwise physically impaired people.

## **ADMINISTRATIVE REVIEW (APPEAL) OPPORTUNITIES**

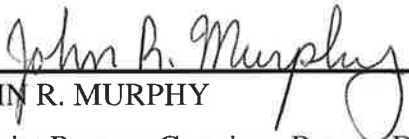
In accordance with 36 CFR 215.3 this proposed action was not subject to Notice and Comment procedures of the Forest Service appeal regulations. In accordance with 36 CFR 215.12, this decision is not subject to appeal.

## IMPLEMENTATION DATE

This decision may be implemented immediately for purposes of NEPA and 36 CFR 215, but not until Tomichi Resources LLC provides an acceptable reclamation bond instrument, is permitted through Colorado DRMS, and has accepted in writing the changes to their PoO as described in this DM.

## CONTACT

For additional information concerning this decision contact: Jeff Burch, Environmental Coordinator, 2250 HWY 50, Delta, Colorado 970-874-6649.

 JOHN R. MURPHY District Ranger, Gunnison Ranger District	11-2-2011 Date
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